Motion M/L Void (11/16)

Press one of the buttons, indicating the city where the case was filed.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re Brian C. Smith) Case No. 16-55244
Amanda M. Smith) Chapter 13
) Judge C. Kathryn Preston

Debtor/s

MOTION FOR DETERMINATION THAT MORTGAGE/LIEN IS WHOLLY UNSECURED AND VOID

Brian C. and Amanda M. Smith (the "Debtor," whether individually or collectively) moves the court, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a) and 1327(c), and Federal Rules of Procedure 3012, 9013 and 9014(b), for an order determining that the mortgage/lien of Ohio Housing Finance Agency (the "Creditor") is wholly unsecured and void.

Memorandum In Support

(1) The Debtor filed a voluntary petition under chapter 13 of the Bankruptcy Code on August 11, 2016 (the "Petition Date").

☐ The Debtor's case was converted to a case under Chapter ______ of the Bankruptcy Code on ______________.

(2) As of the Petition Date, the Debtor was the owner of the following real property located at 13860 Chambers Road, Sunbury OH 43074 (the "Property"). The Debtor owns the Property in fee simple.

☒ A legal description of the Property is attached as Exhibit 1.

(3) The value of the Property as of the Petition Date, as set forth in the appraisal filed with the Court at Doc. 20, was $ 169,100.00.

(4) The Debtor's interest in the Property as of the Petition Date was $ 169,100.00.

(5) As of the Petition Date, the Property was subject to certain mortgages/liens in the amounts specified and in the relative priority set forth below:

First mortgage/lien:

U.S. Bank NA

in the amount of $ 176,270.32. The first mortgage/lien was obtained by the mortgagee/

lienholder on November 9, 2015. The first mortgage/lien was filed of record on November 12, 2015, in the Office of the Recorder, Delaware County, Ohio, as Instrument Number 2015-00032576.

	Subsequent mortgage/lien: ______ in the amount of $ ______. The subsequent mortgage/lien was obtained by the mortgagee/ lienholder on ______. The subsequent mortgage/lien was filed of record on ______, in the Office of the Recorder, ______, as Instrument Number ______. This mortgage/lien is the ______ mortgage/lien on the Property.

The Creditor's mortgage/lien sought to be avoided is in the amount of $ 9,050.00. This mortgage/lien was obtained by the Creditor on November 9, 2015. This mortgage/lien was filed of record on November 12, 2015, in the Office of the Recorder, Delaware County Ohio, as Instrument Number 2015-00032577.

(6) Value of the property:	$	169,100.00
Total amount of all mortgages/liens superior to the Creditor's mortgage/lien:	$	176,270.32

(7) The amount of the mortgage(s)/lien(s) senior to the mortgage/lien to be avoided exceeds the value of the Property. As a result, there is no equity to which the Creditor's mortgage/lien may attach, and the Creditor's mortgage/lien is wholly unsecured and void under the combined effect of 11 U.S.C. §§ 506(a), 1322(b)(2), 1325(a) and 1327(c) and the terms of the Debtor's plan. *See Lane v. Western Interstate Bancorp. (In re Lane)*, 280 F.3d 663 (6th Cir. 2002).

(8) Unless otherwise ordered, the claim of the Creditor, if filed, shall be allowed and paid only as an unsecured nonpriority claim and shall be treated under the Debtor's Chapter 13 plan in the same manner as all other unsecured nonpriority claims.

(9) Upon
Discharge of the Debtors,
the mortgage/lien of the Creditor on the Property will be avoided. If the Creditor fails to timely release the the mortgage/lien, the Debtor may submit an order granting this motion to the applicable court or recorder's office as evidence of the release of the Creditor's mortgage/lien.

WHEREFORE, the Debtor requests that the court grant the Motion for Determination that Mortgage/ Lien is Wholly Unsecured and Void.

Respectfully submitted,

/s/ Ronald K. Nims
Ronald K. Nims/0024361
Law Office of Ronald K Nims LLC
10172 Windsor Way, Powell OH 43065-7668
Ph: (614) 565-1472
Fx: (614) 748-0598
rknims@nimslaw.com

Notice of Motion

Debtor has filed a Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion**, you must file with the court a response explaining your position by mailing your response by regular U.S. Mail to

United States Bankruptcy Court, 170 North High Street, Columbus, Ohio 43215

OR your attorney must file a response using the court's ECF System.

The court must **receive** your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to:

Ronald K. Nims, Law Office of Ronald K. Nims LLC, 10172 Windsor Way, Powell OH 43065-7668

Frank M. Pees, 130 E. Wilson Bridge Road, Suite 200, Worthington, Ohio 43085

Office of the US Trustee, 170 N. High Street, Suite 200, Columbus, OH 43215-2403

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting the relief without further hearing or notice.

Certificate of Service

I hereby certify that true and accurate copies of the foregoing Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void and Notice of Motion were served on December 9, 2016

On the following parties by regular U.S. Mail:

Douglas A. Garver, Executive Director, Ohio Housing Finance Agency, 57 E Main St, Columbus OH 43215-5135

And on the following parties by certified mail, return receipt requested:

None

And on all ECF participants registered in this case at the email address registered with the Court on the date of filing.

/s/ Ronald K. Nims

Ronald K. Nims/0024361
Law Office of Ronald K Nims LLC
10172 Windsor Way, Powell OH 43065-7668
Ph: (614) 565-1472
Fx: (614) 748-0598
rknims@nimslaw.com

Exhibit 1

Doc ID: 010890410002 Type: OFF
Kind: DEED
Recorded: 11/12/2015 at 02:30:50 PM
Fee Amt: $28.00 Page 1 of 2
Workflow# 0000106945-0001
Delaware County, OH
Melissa Jordan County Recorder
File# 2015-00032575
BK 1387 PG 2658-2659

DANA RAY
BOX

Delaware County
The Grantor Has Complied With
Section 319.202 Of The R.C.
DATE 11/12/15 Transfer Tax Paid 543—
TRANSFERRED OR ~~TRANSFER NOT NECESSARY~~
Delaware County Auditor By B.H

GENERAL WARRANTY DEED
SURVIVORSHIP
(R.C. 5302.05, 5302.06, 5302.17 and 5302.20)

KNOW ALL MEN BY THESE PRESENTS, that **Chase A. Saunders,** unmarried of Fort Bend County, for valuable consideration paid, grant(s), with general warranty covenants, to **Amanda M. Smith and Brian C. Smith,** wife and husband, for their joint lives remainder to the survivor of them

whose tax mailing address is 2811 Bent River Ct Sugar Land TX 77479,

the following real property situated in the Township of Porter, County of Delaware, State of Ohio:

TRACT I:

Also being a part of Farm Lot 15, in Range 16, Township 5, Section 2, United State Military Lands, and more particularly described as follows:

Beginning, for reference, at a nail at the intersection of East Liberty Road #55, and Chambers Road #63:

Thence along the centerline of said Chambers Road, South 86 degrees 0° East, a distance of 1800.91 feet to the true point of beginning of the herein described tract;

Thence continuing along the centerline of said Chambers Road, South 86 degrees 0° East a distance of 382.06 feet to a railroad spike;

Thence South 04 degrees 12° 47' West a distance of 595.00 feet to a point, passing an Iron Pin at 18.00 feet;

Thence North 86 degrees 0° West a distance of 374.22 feet to a point;

Thence North 03 degrees 27° 22" East, a distance of 595.00 feet to the point of the beginning. Containing 5.165 acres, more or less.

Parcel No.: 516-200-01-148-000 (Tract I)

Property Address: 13860 Chambers Rd., Sunbury, OH 43074

Prior Instrument Reference: Recorded in Book 1289, Page 2485, Recorder's Office, Delaware County, Ohio.

Except for the following and subject to all of which this conveyance is made: legal highways; zoning ordinances; real estate taxes and assessments which are now or may hereafter become a lien on said premises; covenants, conditions, restrictions and easements of record; and all coal, oil, gas, and other mineral rights and interests previously transferred or reserved of record.

Executed this 28 day of October, 2015.

Seller(s):

Chase A. Saunders

State of TEXAS
County of Harris

The foregoing instrument was acknowledged before me freely this October 28, 2015 by Chase A. Saunders.

NOTARY PUBLIC STATE OF TEXAS
RODOLFO BAUTISTA JR
My Commission Expires
November 19, 2016

Notary Public:
Notary County/State: Texas Harris
County Acting In: Harris
Commission Expires: 11/19/2016

This instrument was prepared by:
Paul E. Blevins, Attorney at Law
5900 Sawmill Road, Suite 100
Dublin , OH 43017

File Number: 2231093NE